

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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4 TRANSCRIPT OF PROCEEDINGS

5 PREHEARING CONFERENCE

6 JULY 11, 2007

7 Jefferson City, Missouri

8 Volume 1

9 _____

10 Abb D. Rhodes,) Case No. GC-2007-0406

11 Complainant,)

12 Vs.)

13 Laclede Gas Company,)

 Respondent.)

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16 BENJAMIN H. LANE, presiding

17 REGULATORY LAW JUDGE.

18 _____

19 REPORTED BY:

20 LISA M. BANKS, CCR

21 MIDWEST LITIGATION SERVICES

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1 P R O C E E D I N G S

2 JUDGE LANE: It's about 9:20 a.m. on
3 Wednesday, July the 11th. We're here for a prehearing
4 conference in Case No. GC-2007-0406 that's captioned
5 Abb D. Rhodes vs. Laclede Gas Company. And by order
6 dated June the 15th, the Commission scheduled this
7 prehearing conference and also directed the filing of a
8 proposed procedural schedule. And we'll get into that
9 a bit later.

10 This matter is contested, of course, at
11 the present time and that's the reason we're having
12 this prehearing conference. There are two main
13 objectives that I like to try to achieve at prehearing
14 conferences like this, which was explained in the order
15 setting the prehearing conference.

16 First of all, it provides an opportunity
17 for the parties to pursue settlement discussions
18 face-to-face or in this case voice-to-voice, to try to
19 settle this matter without the time and the cost and
20 the expense of the uncertainty of an -- of an
21 evidentiary hearing. The law favors settlements based
22 on valid considerations. And if settlement is
23 possible, I certainly encourage the parties to pursue
24 full and frank settlement discussions while we're all
25 around the same table today.

1 As indicated in the order setting the
2 prehearing conference, the -- anything that's said in
3 this conference is privileged and cannot be introduced
4 into evidence at an evidentiary hearing should one
5 occur unless it is fully -- unless it's provable by
6 independent record evidence. The reason for that of
7 course is that we want to encourage a full and frank
8 discussion of the issues and not have anything --
9 positions that may be taken, things that made be said
10 during settlement negotiations to -- to a sabotage or
11 to have that be used against you should settlement
12 negotiations be unsuccessful. So that's the major
13 thing.

14 Depending on the nature of the case,
15 sometimes I am more active in framing the issues for
16 settlement than I am in certain cases. I believe the
17 Commission's June 15th order setting this hearing
18 provided a concise summary of what the allegations of
19 the complaint are, what Laclede's response was and
20 Staff's -- the results that Staff was able to come up
21 with after conducting its own independent
22 investigation. So that's all been laid out; the
23 positions, I think, and the evidence that each party
24 would intend to present at an evidentiary hearing
25 should one take place.

1 So I think those issues are pretty clear
2 cut, so I'm not going to take a real active role in
3 attempting to frame the issues for you for purposes of
4 settlement before I leave this on the record portion of
5 this evident-- of this prehearing conference.

6 The second thing that I like to do at a
7 prehearing conference is to prepare the parties should
8 settlement negotiations ultimately prove unavailing, to
9 prepare the parties to discuss the nature of any
10 discovery that each side is wanting to conduct before
11 an evidentiary hearing.

12 Mr. Rhodes, I suspect that you're
13 probably not an attorney, but you are represented by an
14 attorney, and I'm sure he'll explain to you what the
15 term discovery means. But basically it's a process
16 where each of the sides to a controversy here at the
17 Commission is permitted to request of the other side
18 any documents or information they have that would shed
19 light on the various claims that have been asserted by
20 you, as the complainant. And that process works two
21 ways, Laclede is also entitled as a respondent in this
22 matter to ask you formally for any information that you
23 have that you have that may assist in its assertion of
24 defenses to the claims that you have raised.

25 It sounds like there's been a good deal

1 of informal discovery already in this case by means of
2 phone calls. I know that there are copies of bills and
3 so forth in the record and I know Staff's report
4 recounts a great deal of evidence, but there may be
5 additional things that are not part of the record at
6 this moment that you may want to request in the way of
7 discovery.

8 You should also be prepared should
9 settlement negotiations be ultimately unsuccessful to
10 conduct -- to participate in an evidentiary hearing,
11 this would include such things as preparing a proposed
12 procedural schedule, and I believe the Commission's
13 order of the 15th actually ordered the parties to
14 jointly prepare and file a proposed procedural schedule
15 in this matter no later than July 25th, 2007.

16 That schedule could include such things
17 as, you know, getting ready to name the witnesses you
18 expect to call at the hearing, the number and nature
19 any exhibits you plan to present, maybe the anticipated
20 length of the hearing, the issues that will be
21 presented for decision by the Commission at the
22 hearing, those types of things.

23 And again Mr. Rhodes, you have an
24 experienced attorney representing you and of course
25 Office of Public Counsel is here and I'll get your

1 entries oral entries of appearance in just a second. I
2 realized I neglected to do that. I think some of you
3 may have turned in forms. But anyway, there are
4 attorneys here that can assist you with understanding
5 what issues are involved in a procedural schedule.

6 So before we go off the record I suppose
7 I ought to have the parties all entry -- enter their
8 oral entries of appearance, just for the record since
9 not everyone is here present today. So, let's go ahead
10 and start with -- with Abb Rhodes, the complainant.

11 MR. RHODES: What you what you want me
12 to do?

13 MR. ALLEN: This is John Allen, I
14 represent Mr. Rhodes. I'm an attorney -- State --
15 licensed in Missouri. Mr. Abb Rhodes is the
16 complainant and he is here with me.

17 JUDGE LANE: Thank you very much
18 Mr. Allen. And for Laclede today?

19 MR. ZUCKER: This is Rick Zucker,
20 Z-U-C-K-E-R, on behalf of Laclede Gas Company, 720
21 Olive Street, St. Louis, Missouri, 63101.

22 JUDGE LANE: All right, and for Staff?

23 MR. BERLIN: Bob Berlin, Post Office Box
24 360, Jefferson City, Missouri, 65102, appearing on
25 behalf of the Staff of Missouri Public Service

1 Commission.

2 JUDGE LANE: Thank you very much,
3 Mr. Berlin. And finally, Office of Public Counsel.

4 MR. POSTON: Thank you. Marc Poston,
5 appearing on behalf of the Office of the Public
6 Counsel.

7 JUDGE LANE: Thank you Mr. Poston. I
8 also want to say there are a couple of additional
9 members of the Commission Staff here that are very
10 familiar with the complainant's allegations and helped
11 prepare the report. And they would be here to answer
12 any questions that you may have. This provides
13 basically one last best chance for everyone to sit
14 around the same table and to hear each other and to
15 flush out any areas, ask any questions that you want to
16 so that we're all on the same page.

17 We can very clearly and sharply define
18 what the contested issues in this matter are. The
19 attorneys may want to talk about -- during the
20 settlement process may want to talk about some
21 questions of law that are involved in this case, such
22 as whether the Commission has the authority to award
23 some of the relief that has been requested by Mr. Allen
24 in the form of attorney's fees, in the form of monetary
25 compensation for the alleged negligence of Laclede in

1 maintaining and reading their meters. So there are
2 some legal issues to discuss as well.

3 So I want to again apologize for the
4 difficulties that we had in getting this started --
5 kicked off on time today. But it looks like we've
6 overcome them, thanks to Mr. Zucker being able to
7 conference people in from his home phone and I really
8 appreciate that. So before we go off the record, and I
9 leave the room, leaving you to discuss the issues, does
10 any one have any questions or concerns that I can
11 address before -- before we move on to this final phase
12 of the on the record portion of this prehearing
13 conference?

14 MR. ALLEN: Mr. Rhodes has a question.

15 JUDGE LANE: Yes, sir?

16 MR. RHODES: Yeah. You stated that the
17 Public Service Commission did an investigation; I think
18 that's what I heard you say, that they performed their
19 own investigation. I would like to know how they
20 performed that investigation. Nobody came by my place,
21 nobody called me, nobody came and seen the property,
22 nobody came and -- to do anything. What investigation
23 could they do like that?

24 JUDGE LANE: Well Staff's report in this
25 matter was filed on, let's see, May 29th, 2007 and your

1 attorney was provided a copy of that. That includes
2 Appendix A, which is the full Staff report with
3 attached schedules one through five. And all that
4 documentary evidence is there and I can't speak to --
5 since I did not personally participate in the
6 investigation, I can't speak to the amount of personal
7 contact they may have had with you or -- or that
8 regard, but I can tell you it was based on evidence
9 that they had received one way or the other, perhaps in
10 an informal complaint process or the billing and so
11 forth.

12 But I certainly appreciate your concern
13 sir, and now would be the time if you've got concerns,
14 if you feel like there's information that's been
15 overlooked and that you haven't been heard and that
16 you've got something to add to the Staff's report and
17 investigation in this matter, please take this
18 opportunity to do so. Because they're here to listen,
19 Office of Public Counsel and everyone is interested in
20 getting as much information as possible about your
21 complaint and about the defenses so that the
22 adjudication process can reach a just result.

23 And if you have information that you
24 would like to provide that no one has ever asked you
25 about or that you've never had a chance to tell your

1 side of the story, I would definitely suggest doing
2 that today. So, Mr. Rhodes, thank you very much for
3 bringing that up.

4 MR. RHODES: Okay. Then also I read
5 somewhere -- now, I haven't read this report that you
6 talking about that my lawyer -- I think he got it here,
7 but I haven't read it. I don't know what it says, but
8 I have read some of the affidavits that were mailed to
9 me. And in one of those affidavits or whatever they
10 claimed -- they stated that there was a gas leak in my
11 barn. There was a -- matter of fact there were about
12 two or three misstatements in that whole investigation
13 that they put in.

14 JUDGE LANE: Okay.

15 MR. RHODES: Also, they were suppose --

16 JUDGE LANE: Mr. Rhodes? Mr. Rhodes,
17 I'm sorry to have to interrupt you, but this is not an
18 evidentiary hearing. While I'm here, we really don't
19 want to get into the allegations of the specific facts
20 and what it is and is not inaccurate because I need to
21 be neutral and unbiased and not hear that kind of thing
22 until the actual hearing. So --

23 MR. ALLEN: To say, Mr. Lane, we have
24 some issues with the Staff report and we will take them
25 up at the hearing. Mr. Rhodes inquiring was whether or

1 not, if there was an analysis done or investigation
2 done that he was not aware of that and we will find out
3 how they did that during the discovery.

4 JUDGE LANE: All right. And that's
5 perfectly fine. That's -- that's one of the rea--
6 that's one of the things that discovery, of course, is
7 intended to provide. I'm sorry, I didn't mean to cut
8 him off, I just wanted to make sure we that we didn't
9 start getting into particular issues or fact, being as
10 this isn't an evidentiary hearing and I need to stay
11 out of those issues. It's not right for adjudication
12 at this particular moment.

13 But thank you very much and I appreciate
14 you letting me know that he is unaware of some of the
15 specifics of Staff's investigation. And I think after
16 everyone's had a chance to digest the reports and other
17 documents that have been produced already in this case,
18 then we'll be a lot further toward a complete
19 understanding, possible settlement and a hearing if
20 necessary.

21 So, or there any other questions or
22 concerns that I can address before I leave and we close
23 the on the record portion of this prehearing
24 conference?

25 MR. ZUCKER: Judge Lane, this is Rick

1 Zucker.

2 JUDGE LANE: Yes, sir.

3 MR. ZUCKER: Do you have any preference
4 regarding written testimony? Pre-filed written
5 testimony.

6 JUDGE LANE: I do not. We've got plenty
7 of time in this case. We don't have to worry about an
8 expedited schedule, so pre-filed written testimony will
9 be perfectly acceptable. I would anticipate since the
10 Commission's order of the 15th indicated that the
11 parties are to jointly file and prepare that procedural
12 schedule that could be one of the things that you could
13 certainly address. Timing for the filing of any
14 pre-filed written testimony, that's all wide open.

15 MR. ZUCKER: Okay.

16 JUDGE LANE: As well as the briefing
17 schedule, prehearing briefs, posthearing briefs, any of
18 those things, that's all wide open for the parties to
19 discuss and talk about and put in their schedule.

20 MR. ZUCKER: Okay. Thank you.

21 JUDGE LANE: And I said, I believe that
22 schedule is currently due on July 25th, which is about
23 two weeks away. If it -- if the discovery process
24 proceeds and we need a little more time of course, I
25 would certainly entertain a motion to extend that

1 deadline if we need the additional time of course.

2 All right. Not hearing any other
3 further questions or concerns, I want to thank
4 everyone, thank you Mr. Rhodes for appearing in person,
5 well over the phone, whatever -- today. And for us
6 overcoming the technical obstacles that we had to
7 overcome. I want to again thank everyone for appearing
8 today and I hope that you have a productive discussion
9 in the prehearing conference after I've gone.

10 And until we meet again, thank you very
11 much and we're off the record.

12 (WHEREIN; the proceedings were
13 concluded.)

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1 CERTIFICATE OF REPORTER

2
3 I, LISA M. BANKS, a Certified Court Reporter, within
4 and for the State of Missouri, do hereby certify that the
5 witness whose testimony appears in the foregoing prehearing
6 conference was taken by me to the best of my ability and
7 thereafter reduced to typewriting under my direction; that I
8 am neither counsel for, related to, nor employed by any of
9 the parties to the action in which this prehearing
10 conference was taken, and further, that I am not a relative
11 or employee of any attorney or counsel employed by the
12 parties thereto, nor financially or otherwise interested in
13 the outcome of the action.

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16 Lisa M. Banks, CCR
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